

ARTICLE APPEARED
ON PAGE A-1

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Court Ruling Affirms Government Liability In C.I.A. Mail Checks

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A Federal appeals court has affirmed a decision requiring the Government to pay \$1,000 each to three persons whose mail was opened by the Central Intelligence Agency in a domestic mail-monitoring program.

The decision could lead to the payment of many millions of dollars in damages, according to Melvin L. Wulf, an attorney for the American Civil Liberties Union who represented two of the plaintiffs. He said he would ask the Government for a general settlement of \$1,000 for every person whose mail was opened in the secret program.

He estimates the number of persons involved at "tens of thousands."

Further Legal Move Weighed

United States Attorney Edward R. Korman said the Solicitor General would decide whether to ask the United States Supreme Court to review the appellate decision, which was issued in Manhattan Thursday by the United States Court of Appeals for the Second Circuit.

The three \$1,000 damage awards had been ordered by Judge Jack B. Weinstein of the Federal District Court in Brooklyn.

The appeals court affirmation was written by Judge Murray I. Gurfein, with the concurrence of Judge James L. Oakes. In a partial dissent, Judge Leonard P. Moore said he would have limited the damages to \$1 each.

Judge Gurfein observed that the Central Intelligence Agency had "covertly opened first-class mail which American citizens sent to, or received from, the Soviet Union." He said that "over 215,000 pieces of mail were inspected and copied" during the 20-year program that ended in 1973.

Originally Sued Over Mail

The case grew out of suits by three people whose mail was opened by C.I.A. agents in New York while the mail was on its way to the Soviet Union from the United States.

The plaintiffs are Norman Birnbaum, an Amherst College professor who wrote to a Soviet professor about a sociology meeting; Mary Rule MacMillen, a former Northeastern University placement coordinator who wrote to a Soviet dissident; and B. Leonard Avery, a Minneapolis advertising executive whose son wrote to him from Moscow on a visit.

In his 42-page decision, Judge Gurfein stressed that "there is no statute or regulation which sanctions the mail-opening procedure engaged in by the C.I.A." He said that the agency's legislative charter gave it "no authority to gather intelligence on domestic matters" and that it had "no discretion to engage in these mail-opening activities."

"We assume that the C.I.A. officials meant well by their country," Judge Gurfein said, adding that "the security of the nation was said to be involved." But he ruled that "the United States is liable to these plaintiffs for harm caused by the mail openings."

"Compensation for incidental harm resulting from the Government's pursuit of its security interests," he said, "is more justly borne by the entire body politic than by agents of the Government, who, out of patriotic zeal, exceeded the outer limits of their delegated authority."

Judge Gurfein said the appeals court was affirming the three awards of \$1,000 "with the feeling that they represent the upper limit of allowable compensation in these cases." In a footnote, he indicated that the statute of limitations would bar any mail-opening claims that had not been filed by now.

Hundreds of Claims Filed

The lawyer for the Civil Liberties Union said that hundreds of persons had already filed administrative claims and that the Government would be asked to compensate all the many thousands whose mail had been opened by the C.I.A.

If the Government rejects a proposed settlement, additional suits would be necessary to seek damages, because the judge refused to make the suits by the three original plaintiffs into a class-action case for everyone whose mail had been opened.

In awarding damages to the first three plaintiffs, Judge Weinstein ruled last year that they had suffered an invasion of privacy and "actual mental pain, outrage and shock." He told the Government to send them a letter of apology in addition to the \$1,000 in damages.

The appellate decision reversed the order for the letter of apology, however, on the ground that "money damages" were the only relief that the law provided in this case.